IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-5283

JAMES A. JACKSON,

*Petitioner,*

v.

COMMONWEALTH OF VIRGINIA
AND
R. ZAHRADNICK, Warden,

*Respondents.*

On Writ of Certiorari To the United States Court of Appeals For the Fourth Circuit

## REPLY BRIEF FOR THE PETITIONER

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## ARGUMENT

### TO GIVE SUBSTANCE TO THE HOLDING OF *IN RE WINSHIP*, IT WAS THE DUTY OF THE FEDERAL COURTS TO MAKE A DETERMINATION OF WHETHER A RATIONAL TRIER OF FACT COULD HAVE FOUND THE PETITIONER GUILTY OF FIRST DEGREE MURDER BEYOND A REASONABLE DOUBT.

#### B. The Court of Appeals Was Incorrect in Its Determination That *Thompson* v. *City of Louisville* Was the Proper Rule to Follow in Granting or Denying the Writ of Habeas Corpus.

The State of California in its amicus curiae brief in support of respondent put great weight on the argument that this Court has not specifically held that the standard of *In re Winship* should be available in federal collateral review, despite the opportunity to do so in the case of *Vachon* v. *New Hampshire*, 414 U.S. 478 (1974). However, in *Vachon* v. *New Hampshire* this Court was not presented with the question of whether a higher standard of evidence was required under the due process clause. Given that the question was not presented to this Court, it is hardly surprising that this Court did not announce that standards other than those set forth in *Thompson* v. *City of Louisville*, 362 U.S. 199 (1960), could also violate due process. As the Court said in *Hankerson* v. *North Carolina*, 432 U.S. 233, 241 (1977): " 'We do not reach for constitutional questions not raised by the parties.' " [quoting from *Mazer* v. *Stein*, 397 U.S. 201, 206 n.5 (1954)].



#### C. When a State Convicts a Person on Proof Less Than What the Legislature Requires, the Federal System Is Empowered to Intrude Into the Affairs of the State to Protect the Federal Interest Involved in That Individual Case.

The respondents and amici curiae have laid great emphasis on three cases: (1) *Estelle* v. *Williams*, 425 U.S. 501 (1976); (2) *Francis* v. *Henderson*, 425 U.S. 536 (1976); and (3) *Wainwright* v. *Sykes*, 433 U.S. 72 (1972). The cases were cited by them to illustrate alleged policy reasons why *In re Winship*, 397 U.S. 358 (1970), should not be available in federal collateral review.

The statements found in these cases emphasize a healthy respect for the state court system. They should be understood in the framework of a defendant represented by counsel who has foregone the opportunity to raise his constitutional claim at the state court level. Crucial to this "waiver" approach is the theory that once the defendant retains or it appointed counsel, the defendant exercises free choices and is bound by the choices he makes. In this framework, considerations of certainty, finality, and efficiency are valid.

However, unlike the petitioner in *Estelle* v. *Williams*, who did not object to the wearing of prison

apparel at his trial, or the petitioner in *Francis* v. *Henderson*, who did not object to the racial composition of the grand jury at his trial, or the petitioner in *Wainwright* v. *Sykes*, who did not object to the admissibility of his confession at his trial, Petitioner Jackson did not waive the argument that his conviction was contrary to the law and evidence. Both at the trial court [Tr. 125] and at the Supreme Court of Virginia [Brief of Amicus Curiae - State of California A.1-10] Petitioner Jackson's court-appointed lawyer, Mack T. Daniels, argued that the judgment of the trial court should be set aside as contrary to the law and evidence. This meant simply that the evidence was lacking to sustain the conviction. Certainly then, the principle of insufficient evidence to sustain the conviction was not waived in the state courts.

Since Petitioner Jackson's rights have not been waived in the state courts, his rights under the writ of habeas corpus are intact. Respondent and amici curiae put forth broad policy arguments to suggest that Petitioner Jackson should not be afforded the fundamental principle of justice, i.e., fairness to the individual before the court. We submit that there is, indeed, a broad issue at stake here. That issue involves innocence and equity.

The relief afforded by the writ of habeas corpus is of immeasurable value when weighed in the scales of justice. Any possible deleterious effect upon a federal or state criminal justice system must be compared to the benefits to any one person whose liberty has been



unlawfully restrained. Briefs filed by the respondent and its amici curiae have expressed generalized and unfounded fears at what they feel would be an unjustified intrusion into the state courts and their autonomy.

To summarize, the respondent and the amici curiae have stated that extension of the principles of the writ of habeas corpus to the standards of *In re Winship* would cause the following harms: a) place undue burdens upon the federal courts; b) cause a lack of finality of state judgments; c) create friction between state and federal courts; d) disregard principles of comity; e) create duplicity in review of cases; f) interfere with punishment and rehabilitation of state prisoners; g) interfere with the orderly administration of justice; and h) force review by transcript alone. We submit that the states have placed their fears above what should be their primary concern, i.e., the ultimate ideals of justice and fairness. For, "[the writ] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraint upon their liberty." *Peyton* v. *Rowe*, 391 U.S. 54, 66 (1968) [quoted from *Jones* v. *Cunningham*, 371 U.S. 236, 243 (1963)].

The federal courts, as do all courts, function at the behest of the goals of justice. If this duty places a heavy burden upon or causes friction between federal and state systems, this problem must be resolved in

favor of fundamental fairness for the individual. Comity principles also must be set aside to protect that one person whose rights may have been abridged. Duplicity of review will serve as a safeguard to the rights of the individual. It is understood generally that convictions are appealed every day by the thou sands from lower to higher state and federal courts. Thus, finality of state court judgments occurs only when every avenue of appeal has been exhausted. While those avenues of appeal are being explored, few state prisoners wander the streets as free men or women. Punishment and hypothetical rehabilitation normally continue throughout an appeal process.

The orderly administration of justice has survived both the extension and the diminution of the scope of the writ of habeas corpus. It will survive, and should not be permitted to override, the expansion of the rights of the individual. State appellate courts have used, as a matter of course, transcripts to review lower court judgments. There is no reason why federal courts cannot, as do state appellate courts, review transcripts. Should it happen, as has been suggested by respondent and amici curiae, that prisoners would wait until witnesses are no longer available before challenging a conviction, it can be countered that these same prisoners may have spent undeserved years in prison before grounds for an appeal surfaced.

The court system, the law, and its institutions must progress toward that ultimate goal, fairness. Thus, a federal question has been raised when fundamental



fairness is an issue. [*Grondler* v. *North Carolina*, 283 F.2d 798, 802 (4th Cir. 1960)]. No matter what the objections raised by respondent, from the broad aegis of state's rights to the picayune matter of review by transcript, the courts must never lose sight of the fact that individual rights must never be trammeled in the stampede of an ironclad system. We submit that the writ of habeas corpus, as "both the symbol and the guardian of individual liberty" [*Peyton, supra* at 58] should be extended to allow review of convictions which have not been proven beyond a reasonable doubt.

This is why the matter of innocence as an issue before the Court is so important to Petitioner Jackson. The broad state considerations outlined above do not stand on equal footing with the question of innocence. This is readily apparent in the decision *Stone* v. *Powell*, 428 U.S. 465 (1976) where in footnote 31 of pages 491-2 this Court stated: "Resort to habeas corpus especially for purposes *other than to assure that no innocent person suffers an unconstitutional loss of liberty*, results in serious intrusions on values important to our system of government." [emphasis added]. This footnote clearly expresses the view that where innocence is at stake, this fact should override the state interests found in *Estelle* v. *Williams*, *Francis* v. *Henderson*, and *Wainwright* v. *Sykes*, and broad policy arguments in the decision of granting or denying the writ of habeas corpus. As we argued in the brief filed on behalf of Petitioner Jackson, if he was

convicted of first degree murder when the evidence was insufficient, he is innocent of the charge for which he was convicted. Thus he falls squarely within the confines of footnote 31.

Therefore, since Petitioner Jackson has not waived his claim in the state court, and since he has made a colorable claim of innocence, the writ of habeas corpus should issue. Certainly the policy reasons argued by the respondents and the amici curiae should not override the fundamental fact that justice is but another facet of fairness, and that courts and their institutions seek to see that justice is done.



## CONCLUSION

For the reasons set forth herein and set forth in the Brief For The Petitioner, the decision of the United States Court of Appeals for the Fourth Circuit should be reversed and the writ of habeas corpus should be issued. In the alternative, the case should be remanded to the appellate court with further instructions as to the applicable law in this case.

Respectfully submitted,

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